

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

Criminal Misc. Application No. 361 of 2006
(Old No. 4156 of 2000)

Dilip Kapoor S/o Sri Gopal Naraian Kapoor
Presently posted as Executive Officer
Nagar Panchayat
Mahua Kheraganj
Police Station Kashipur
District Udham Singh Nagar

... Applicant

Vs

1. State of U.P.
2. Abdul Hasan S/o Abdul Rashid
R/o House No. 36
Ward No. 8, Nagar Panchayat
Mahua Kheraganj
Police Station Kashipur
District Udham Singh Nagar

... Respondents

Sri Dinesh Chauhan, learned counsel for the petitioner
Sri Lalit Verma, Learned A.G.A. for the State.

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr.P.C. has been filed by the applicant who is the Executive Officer in Nagar Panchayat, Mahua Kheraganj, District Udham Singh Nagar for quashing the proceedings in Criminal Case No. 12 of 2000 Abdul Hasan Vs Dilip Kapoor under Sections 452, 323, 504, 506 I.P.C. pending in the court of Additional Chief Judicial Magistrate, Kashipur, District Udham Singh Nagar.

2. Brief facts of the case are that the complainant of this case is Abdul Hasan, Vice-Chairman of the Nagar Panchayat Board. He has alleged in the complaint that the petitioner who is the Executive Officer was intending to make the recovery of the loan from several persons of the Nagar Panchayat, Mahua Kheraganj. The complainant was one of those persons. However, it reveals from the complaint that a civil suit was filed before the court of Civil Judge (J.D.) for injunction to restrain the Executive Officer of Nagar Panchayat

from realizing the loan. An injunction was also granted in that case.

3. Further allegations in the complaint are that the Executive Officer entered in the chamber of the complainant and threatened him with dire consequences as well as asked him as to why he initiated the civil proceedings against the recovery of the loan.

4. On the complaint lodged by the respondent No. 2 – Abdul Hasan, the Magistrate took the cognizance and issued summoning order against the petitioner to face the trial under Sections 452, 323, 504, 506 I.P.C.

5. Feeling aggrieved by the aforesaid summoning order, this petition has been preferred before the Allahabad High Court which has been subsequently transferred to this Court after creating of new State, for disposal.

6. Heard Sri Dinesh Chauhan, learned counsel for the petitioner, Sri Lalit Verma, learned A.G.A. for the State and perused the record.

7. The record shows that the police investigated the matter and subsequently came to the conclusion that no alleged offence had ever taken place and the complaint lodged by the respondent No. 2 in this regard was found to be false and frivolous. The report of the police is contained as Annexure – 6 to this petition.

8. The record further reveals that the injunction suit which was filed by the respondent No. 2 against the

proceedings of the recovery of loan was ultimately dismissed by the court of competent jurisdiction.

9. However, the allegations made in the complaint do not make out a prima-facie case. There is no reason as to why the petitioner, who is the Executive Officer of the Nagar Panchayat, will enter in the chamber of the Vice Chairman of the Panchayat and start abusing without any rhyme and reasons. It is not disputed that at the time when the alleged occurrence had taken place, the injunction suit was pending and injunction order already granted by the court concerned was in force. The offence alleged under Sections 452, 323 I.P.C. appears to be palpably false and frivolous. The petitioner was an Executive Officer has every right to enter into the chamber of Vice Chairman of Nagar Panchayat and no offence, therefore under Section 452 I.P.C. is made out. Further the offence under Section 323 I.P.C. is also not made out, as there is no reason as to why the petitioner would have abuse and try to assault the respondent No. 2 without any sufficient cause. This complaint appears to have been lodged only for the purpose of putting the petitioner to harassment, so that he could not have any courage to initiate the recovery proceedings against the person concerned including the complainant.

10. However, as far as the offence under Sections 504 and 506 I.P.C. is concerned, no specific allegation or specific words, uttered by the petitioner during the course of the occurrence have been mentioned in the complaint. Therefore, the ingredients of Sections 504, 506 I.P.C. are also not attracted in this case.

11. Having considered the entire material available on record, I am of the view that the complaint filed by the respondent No. 2 against the petitioner appears to be a result of malafides. Further the complaint also appears to be baseless and frivolous. The allegations made in the complaint do not constitute the offence alleged therein. I am of the view that in case, if the criminal proceedings are permitted to continue against the petitioner, the same would amount to abuse of process of court.

12. On the basis of arguments advanced by the learned counsel for the parties as well as after having perused the material available on record, I come to the conclusion that the proceedings in Criminal Case No. 12 of 2000 Abdul Hasan Vs Dilip Kapoor under Sections 452, 323, 504, 506 I.P.C. pending in the court of Additional Chief Judicial Magistrate, Kashipur, District Udham Singh Nagar are liable to be quashed.

13. Accordingly, the petition is allowed. The criminal proceedings initiated against the petitioner by way of Criminal Case No. 12 of 2000 pending in the Court of Addl. C.J.M., Kashipur are hereby quashed.

(B.C. Kandpal, J.)

14.08.2006
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